

A

FILE COPY

PATTON BOGGS, L.L.P.
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WRITER'S DIRECT DIAL

(202) 457-6077

FCC/MELLON APR 16 1996

April 16, 1996

Federal Communications Commission
c/o Mellon Bank
3 Mellon Bank Center
525 William Penn Way
27th Floor, Room 153-2713
Attention Wholesale Lockbox Supervisor
Lockbox 358850
Pittsburgh, PA 15259-0001

Re: IVIDCO, L.L.C.

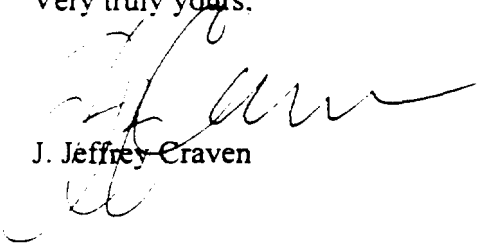
Dear Sir/Madame:

Transmitted herewith on behalf of IVIDCO, L.L.C. auction installment payment Number 1 for the Interactive Video and Data Service ("IVDS") license for Markets IVM 186B, IVM098A, IVM089A, IVM076A.

Please return a stamped-in copy of this filing with the messenger service.

If any questions arise regarding this payment, please contact the undersigned.

Very truly yours,


J. Jeffrey Craven

FCC REMITTANCE ADVICE

PAGE NO. 1 OF 2

(RESERVED)

SPECIAL USE

FCC USE ONLY

(Read instructions carefully BEFORE proceeding.)

PAYOR INFORMATION

1) FCC ACCOUNT NUMBER

Did you have a number prior to this? Enter it.

(2) TOTAL AMOUNT PAID (dollars and cents)

3 0 1 6 6 2 8 0 0 0

\$ 4,636.93

3) PAYOR NAME (If paying by credit card, enter name exactly as it appears on your card)

IVIDCO, L.L.C.

4) STREET ADDRESS LINE NO. 1

2090 East Buster Mountain Drive

5) STREET ADDRESS LINE NO. 2

6) CITY

Tuscon

(7) STATE

AZ

(8) ZIP CODE

85737

9) DAYTIME TELEPHONE NUMBER (Include area code)

(520) 825-8600

(10) COUNTRY CODE (if not U.S.A.)

ITEM #1 INFORMATION

11A) NAME OF APPLICANT, LICENSEE, REGULATEE, OR DEBTOR

FCC USE ONLY

IVDICO, L.L.C.

12A) FCC CALL SIGN/OTHER ID

(13A) ZIP CODE

85737

(14A) PAYMENT TYPE CODE

A

P

A

D

(15A) QUANTITY

1

(16A) FEE DUE FOR
PAYMENT TYPE CODE
IN BLOCK 14
\$323.26

17A) FCC CODE 1

2

(18A) FCC CODE 2

IVM186B

19A) ADDRESS LINE NO. 1

2090 East Buster Mountain
Drive

(20A) ADDRESS LINE NO. 2

(21A) CITY/STATE OR COUNTRY CODE

Tuscon, AZ

ITEM #2 INFORMATION

11B) NAME OF APPLICANT, LICENSEE, REGULATEE, OR DEBTOR

FCC USE ONLY

IVDICO, L.L.C.

12B) FCC CALL SIGN/OTHER ID

(13B) ZIP CODE

85737

(14B) PAYMENT TYPE CODE

A

P

A

D

(15B) QUANTITY

1

(16B) FEE DUE FOR
PAYMENT TYPE CODE
IN BLOCK 14
\$ 449.75

17B) FCC CODE 1

2

(18B) FCC CODE 2

IVM098A

19B) ADDRESS LINE NO. 1

2090 East Buster Mountain Dr

(20B) ADDRESS LINE NO. 2

(21B) CITY/STATE OR COUNTRY CODE

Tuscon, AZ

CREDIT CARD PAYMENT INFORMATION

22) MASTERCARD/VISA ACCOUNT NUMBER:

☐ Mastercard

EXPIRATION DATE:

☐ Visa

Month

Year

23) I hereby authorize the FCC to charge my VISA or Mastercard
for the service(s)/authorization(s) herein describe.

AUTHORIZED SIGNATURE

DATE

PAGE NO. 2 OF 2

SPECIAL USE

(Read instructions carefully BEFORE proceeding.)

THIS CHECK MUST HAVE AN MICR LINE PRINTED ON THE BACK WITH A MICR TYPE NUMBER & MICR TYPE LINE ON THE BACK. MICR TYPE LINE WILL INDICATE A COPY.

NORWEST BANKS **NORWEST BANK ARIZONA, N.A.**
Phoenix, Arizona

OFFICIAL CHECK

500 0483317


Location ID 00258

Remitter IVIDCO LLC Date APRIL 15, 1996

Pay *****\$3.020AND63CTS \$ *****3.020.63

To the Order of F.O.C.

REF: 0768
DRAWER: TRAVELERS EXPRESS COMPANY INC
P.O. BOX 9476 MINNEAPOLIS MN 55480
DRAWEE: FIRST AMERICAN BANK N.A. ST. CLOUD MN

Authorized Signature  Norwest Bank Arizona, N.A.

⑆09⑆900287⑆00500 04833⑆75⑆⑆

THIS CHECK MUST HAVE AN MICR LINE PRINTED ON THE BACK WITH A MICR TYPE NUMBER & MICR TYPE LINE ON THE BACK. MICR TYPE LINE WILL INDICATE A COPY.

NORWEST BANKS **NORWEST BANK ARIZONA, N.A.**
Phoenix, Arizona

OFFICIAL CHECK

500 0483316


Location ID 00258

Remitter IVIDCO, LLC Date APRIL 15, 1996

Pay *****\$843AND29CTS \$ *****843.29

To the Order of F.O.C.

REF: 089A
DRAWER: TRAVELERS EXPRESS COMPANY INC
P.O. BOX 9476 MINNEAPOLIS MN 55480
DRAWEE: FIRST AMERICAN BANK N.A. ST. CLOUD MN

Authorized Signature  Norwest Bank Arizona, N.A.

⑆09⑆900287⑆00500 04833⑆66⑆⑆

THIS CHECK MUST HAVE AN MICR LINE PRINTED ON THE BACK WITH A MICR TYPE NUMBER & MICR TYPE LINE ON THE BACK. MICR TYPE LINE WILL INDICATE A COPY.

NORWEST BANKS **NORWEST BANK ARIZONA, N.A.**
Phoenix, Arizona

OFFICIAL CHECK

500 0483318


Location ID 00258

Remitter IVIDCO LLC Date APRIL 15, 1996

Pay *****\$449AND75CTS \$ *****449.75

To the Order of F.O.C.

REF: 089A
DRAWER: TRAVELERS EXPRESS COMPANY INC
P.O. BOX 9476 MINNEAPOLIS MN 55480
DRAWEE: FIRST AMERICAN BANK N.A. ST. CLOUD MN

Authorized Signature  Norwest Bank Arizona, N.A.

⑆09⑆900287⑆00500 04833⑆84⑆⑆

THIS CHECK MUST HAVE AN MICR LINE PRINTED ON THE BACK WITH A MICR TYPE NUMBER & MICR TYPE LINE ON THE BACK. MICR TYPE LINE WILL INDICATE A COPY.

NORWEST BANKS **NORWEST BANK ARIZONA, N.A.**
Phoenix, Arizona

OFFICIAL CHECK

500 0483315


Location ID 00258

Remitter IVIDCO LLC Date APRIL 15, 1996

Pay *****\$323AND26CTS \$ *****323.26

To the Order of F.O.C.

REF: 1268
DRAWER: TRAVELERS EXPRESS COMPANY INC
P.O. BOX 9476 MINNEAPOLIS MN 55480
DRAWEE: FIRST AMERICAN BANK N.A. ST. CLOUD MN

Authorized Signature  Norwest Bank Arizona, N.A.

⑆09⑆900287⑆00500 04833⑆57⑆⑆

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WASHINGTON, D.C. 20037-1350
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FACSIMILE: (202) 457-6315

WRITER'S DIRECT DIAL

(202) 457-6077

RECEIVED
APR 18 1996
FEDERAL COMMUNICATIONS COMMISSION

April 18, 1996

BY HAND

Mr. William Caton
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Ms. Regina Dorsey
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: FCC Account #3016628000 IVIDCO, L.L.C. New Bedford, MA 76B
Wichita, KS 89A Davenport, IA 98A Green Bay, WI 186B

Dear Mr. Caton & Ms. Dorsey:

We represent IVIDCO, L.L.C. ("IVIDCO"), FCC licensee for the above-referenced IVDS markets. Attached hereto is a copy of IVIDCO's FCC Form 159, including bank checks equal to the "Payment 1" for each of the listed markets.

The reason that these payments are being tendered at this date is the fact that, despite several efforts by IVIDCO to cause the FCC to correct and update its records to reflect IVIDCO's new address, the FCC staff continued to send important documents, including the updated IVDS payment schedules, to IVIDCO's old address.

On April 11, 1996, IVIDCO finally received from the FCC, via facsimile, the revised IVDS payment schedules for its referenced markets. On April 15, 1996, at the request of IVIDCO, the undersigned counsel met with Ms. Dorsey to review this situation. This filing is being made pursuant to that meeting.

PATTON BOGGS, L.L.P.

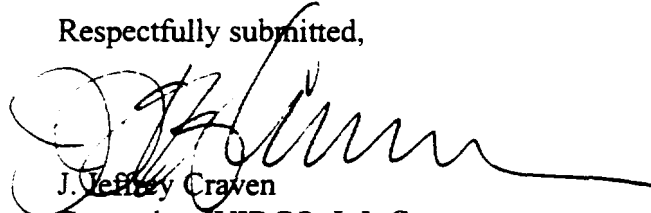
April 18, 1996

Page 2

Accordingly, IVIDCO respectfully requests that the Commission accept these payments without penalty or contingency.

Should any questions arise, please contact the undersigned.

Respectfully submitted,



J. Jeffrey Craven
Counsel to IVIDCO, L.L.C.

cc: Ms. Marilyn Smith

JJC/tmp
178494

STAMP

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
)
Amendment of Part 95)
Extend the Terms of)
Interactive Video Data Service)
Licenses from Five to Ten Years)

RM - _____

RECEIVED

SEP - 4 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

To: Chief, Wireless Telecommunications Bureau

PETITION FOR RULEMAKING

Pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. § 1.1401, Euphemia Banas, Trans Pacific Interactive, Inc., Wireless Interactive Return Path, L.L.C., New Wave Communications, L.L.C., Loli, Inc., Multimedia Computer Communication, Inc., Southeast Equities, Inc., Robert H. Steele, MAR Partnership, IVDS On-Line Partnership, A.B.R. Communications Inc., IVIDCO, L.L.C., Vision TV, Dunbar TV, Corp., and Legacy TV, Inc., all of which are Interactive Video and Data Service ("IVDS") licensees (the "Licensees" or "Petitioners"), request that the Commission: (a) extend the license term for IVDS providers from five (5) to ten (10) years and; (b) allow licensees that qualify for installment payments under the current FCC rules to extend the installment payment period from five (5) to ten (10) years.

Background

IVDS is a point-to-point short distance communications service that provides two-way interactive communication to subscribers located at fixed and mobile locations. 47 C.F.R. § 95.803(a); Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and

Data Service Licensees to Provide Mobile Services to Subscribers, 11 FCC Rcd 6610 (1996).

The FCC awards two IVDS licenses per Metropolitan Statistical Area ("MSA") and Rural Statistical Area ("RSA"). Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules to Provide Interactive Video and Data Services, 7 FCC Rcd 1630 (1992); 47 C.F.R. § 95.803(b). Currently, the Commission issues IVDS licenses for a five-year term. 47 C.F.R. § 95.811(d).

IVDS technology is designed to provide real-time response to information displayed on a television set, pager, or personal computer screen through the use of a wireless remote control. Potential applications for IVDS include interactive messaging as well as commercial and two-way telemetry services, such as remote monitoring of utility services, vending machines, cable television, and home security systems. IVDS technology allows businesses to automate data collection tasks that have previously required manual readings. For example, a utility company can use an IVDS network to take readings from electricity meters several times a day; or even several times an hour. This allows the utility to offer time-of-day usage discounts and allows for more accurate billing and power demand estimation. Without IVDS technology, such constant monitoring would not be economically feasible. See Henderson, Electric Utilities Plug into Telecom, Phone +, June 1995, at 76; Reeves, The Emerging Utility Paradigm, Wireless, February 1996, at 14.

I. The Commission Has Authority To Grant a License Term of Ten (10) Years

The Commission has authority to grant a ten-year license term for IVDS. Section 154(j) of the Communications Act of 1934, as amended, allows the Commission to conduct proceedings "in such manner as will best conduce to the proper dispatch of business and to the ends of justice." 47 U.S.C. § 154(j) (1995). Further, Section 307(c) sets a maximum license period for

certain classes of providers. Any station other than a radio or television broadcasting station may have a license term of up to ten (10) years. 47 U.S.C. § 307(c). The Commission also has authority to modify the provisions of existing licenses by rulemaking. National Broadcasting Co., Inc. v. United States, 319 U.S. 190 (1943); California Citizens Band Assoc., Inc. v. United States, 375 F.2d 43 (9th Cir.), cert. denied 389 U.S. 844 (1967). Thus, the Commission has the authority to grant a ten-year license period for IVDS licensees.

II. The License Period For IVDS Providers Is Substantially Shorter Than For Providers With Similar Technologies And Market Areas

The FCC has designated a five-year licensing period for IVDS providers. 47 C.F.R. § 95.811(d). This contrasts with longer licensing periods for similar technologies. For example, broadcasting stations feature eight-year licenses. 47 U.S.C. § 307(c)(1)(Supp. 1996). Licenses for stations in Point-to-Point Microwave Radio, Local Television Transmission, Multipoint Distribution Service ("MDS"), and Digital Electronic Message Services are issued for a period of ten (10) years. 47 C.F.R. § 21.45(a). Similarly, the recently auctioned Personal Communication Services ("PCS") licenses are assigned for a ten-year period. 47 C.F.R. § 24.15.

Cellular systems, which are technologically very similar to IVDS, and are licensed using the same geographic boundaries, are awarded a ten-year license term. The Commission decided to grant all common carrier and fixed satellite licenses for a ten-year period because: (1) common carrier and fixed satellite service are rarely contested and are granted relatively routinely, (2) the public is adequately protected by regulatory tools other than renewal proceedings, and (3) longer license terms "would result in savings of Commission and licensee resources" by eliminating the cost of filing and processing renewal applications every five (5) years. Common Carriers and Satellite Licensing Procedures Pursuant to the Communications

Amendments Act of 1982, 53 RR 2d 1514, 1515 (1983) ("Common Carrier Licensing Report and Order"). Accordingly, for the same reasons that the Commission has provided for ten-year licenses for other MSA and RSA area providers, IVDS licensees should likewise have a ten-year license.

The FCC originally adopted a five-year license term for IVDS in order to deter trafficking in licenses that were granted by lottery. The FCC said the five year term "strikes a reasonable balance between the administrative burden on both the Commission and the applicant, and our desire to track the status of licensed IVDS operations. These rules will help to reduce any potential for trafficking in licenses by persons who have no real interest in constructing IVDS systems." Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules to Provide for Interactive Video and Data Service, 7 FCC Rcd 1630, 1641, (1992). The need to monitor the IVDS industry to deter the trafficking and unjust enrichment that accompanied lotteries was eliminated when the Commission decided to award IVDS licenses by auction. ("The strongest measure to deter future instances of unjust enrichment in the lottery context has already been taken by Congress when, in the Budget Act, it granted the Commission auction authority . . .") Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 9 FCC Rcd 7373, 7375 (1994). Since the main purpose for the five year license period no longer exists, the Commission should extend the IVDS license term to ten years.

If the Commission finds a continued need to track the status of the IVDS industry, it can do so using other existing IVDS rules. IVDS licensees are required to file applications with the Commission to propose modifications to their systems (47 C.F.R. § 95.815(e), (f)), to assign or transfer control of their licenses (47 C.F.R. § 95.819, 95.821), and to provide three- and five-year

benchmark coverage reports (47 C.F.R. § 95.833). If the Commission needs further information, the existing reporting rules should be modified, rather than requiring a renewal filing.

III. The Short Five-Year License Period For IVDS Providers Inhibits Competition And Will Delay The Development Of IVDS

a. A Ten Year Term Will Help Assure Winning Bidders a Return on Their Investment

In the MDS context, the Commission has said that winning bidders "should be assured of receiving . . . licenses of a duration sufficient so that they may have a reasonable period of time to construct their systems and earn a return on the amounts they invested." Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service, 10 FCC Rcd 9589 (1995) ("MDS Report and Order"). Like MDS bidders, IVDS service providers took part in a competitive bidding process that resulted in expensive acquisitions of license rights. Due to these high costs and the delay in developing IVDS technology, a period longer than five (5) years is necessary for bidders to meet build-out projections and recoup the initial investment. Further investment in the still-developing IVDS technology could be curtailed if the license period is not extended, as individuals and corporations will hesitate to invest in a technology with such limited license periods.

As noted above, the Commission has also recognized the savings that will be realized by both providers and the Commission as a result of a ten-year term: "the longer license terms would result in savings of Commission and licensee resources." Common Carrier Licensing Report and Order at 1515. Potential savings include the cost of licensee personnel needed to complete renewal applications, legal costs, and filing fees. The FCC is well aware of the substantial demand imposed upon its staff by such filings. If a licensee needs to apply only once

every ten (10) years instead of once every five (5) years. the licensee's and the Commission's costs are cut in half.

b. A Ten-Year License Period Will Facilitate Financing Agreements

The Commission has also noted that "bidders who must arrange financing will need to assure lenders that they will have possession of their station licenses for a reasonably lengthy period of time." MDS Report and Order at ¶ 156. Likewise, IVDS providers must assure lenders that they will hold a license for a sufficient period to warrant financial investment. If a ten (10) year license is appropriate for MDS, so it should be for IVDS. Indeed, extending the IVDS license period to ten (10) years would help ensure that small enterprises who wish to compete in the IVDS market will be able to secure financing by convincing financial backers that an investment will have a sufficient period to turn profitable. This will have the added benefit of increasing the number of potential operators in the market, thereby advancing the public interest.

c. A Ten-Year Term Is Especially Helpful To Small Businesses and Entrepreneurs

As the Commission noted, awarding licenses with ten-year terms rather than shorter time spans "serves both prospective bidders and the Commission well." Id. at ¶ 157. The Commission determined that the ten-year period is "of sufficient certainty and length to be fair to parties who must now pay considerable sums, and perhaps obtain outside financing" in order to acquire licenses. Id. This is particularly true for small businesses, since they are more likely to require outside financing. The Commission has acknowledged the difficulty of small and start-up businesses in obtaining private funds. Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 9 FCC Rcd 2348, 2389-90 (1994). Due to this added difficulty in obtaining outside financing, small businesses in particular would benefit from

an extension of the licensing period. As the Commission has noted, financing is easier to obtain over a longer licensing period. *Id.* This is particularly true in the IVDS service, where delays in availability of equipment and service implementation have contributed to difficulty in attracting financing. Increasing small business participation will increase competition within each market and ensure that consumers receive a choice of IVDS providers. The 1993 Budget Act requires the Commission to encourage small businesses attempting to enter into the wireless industry. Omnibus Budget Reconciliation Act of 1993, P.L. 103-66 § 6002(j)(3)(B). Section 257 of the Telecommunications Act of 1996 ("Act") directs the Commission to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services . . ." Pub. L. 104-104, Section 203, 110 Stat. 56, 112. The Commission must also promote a national policy "favoring diversity of media voices, vigorous economic competition, technological advancement and promotion of the public interest, convenience and necessity." *Id.*

d. A Ten-Year License Period Will Facilitate Expansion of Coverage and Development of Regional and National IVDS Networks

No one at the FCC or in the wireless business would have predicted that two years after the IVDS MSA licensing auction, only a handful of IVDS systems would have been constructed and even those operate on only a trial basis. The delay is due to equipment manufacturing, and is clearly beyond the control of IVDS licensees. Therefore, it is particularly important to increase the duration of the IVDS license term so as to allow sufficient time for the development of the new service. Extension of the license term would allow expansion of IVDS networks and the development of regional systems. IVDS licensees, poised on the cutting edge of the nascent interactive multimedia industry, face challenges in constructing local, regional and national

systems that integrate wireless technologies with other technologies to provide new services for the public. With two years already expended, companies will need additional time to concentrate on constructing and servicing IVDS systems and expanding coverage to form national and regional IVDS networks.

The Commission has not yet conducted auctions to distribute IVDS licenses in RSAs, which are critical for establishing regional IVDS coverage. In other contexts, the Commission has recognized that carriers and the public benefit from MSA/RSA market consolidation. The Commission has said that MSAs and RSAs are "too small for the efficient provision of regional or nationwide mobile service" and that "cellular carrier's efforts have frequently been directed towards geographic aggregation to provide wider service areas for consumers and to lower costs of providing service." Amendment of the Commission's Rules to Establish New Personal Communications Services, 9 FCC Rcd 4957, 4987 (1994). Such regional coverage is essential for utilities and other potential IVDS customers that need comprehensive regional coverage. There is less incentive to form important alliances with utility companies and others if the shorter license period unnecessarily restricts the potential profits and usefulness of IVDS networks. Firms may decide that the cost and administrative burden of creating national networks is not justified if the network will be viable for less than five (5) years. IVDS consumers will be less willing to use IVDS and change out existing equipment if license terms expire in a few years.

The encouragement of regional and national networks will facilitate the realization of another Commission goal: stability and continuity of service in the marketplace. The Commission has made clear, both in cellular and related technologies such as IVDS, that stability and continuity of service to the public is vital. Amendment of Part 22 of the Commission's Rules

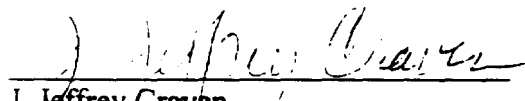
from a five-year to a ten-year period would benefit the licensees, the Commission, and the consumer public.

The Petitioners have charted a positive, practical course of seeking a longer licensing term and a longer period of time to pay-off its obligations. The Commission should promptly and enthusiastically embrace this proposal and expedite the Rulemaking process.

WHEREFORE, it is respectfully requested that the Commission issue a Notice of Proposed Rulemaking to amend Section 95.811(d) of the Commission's Rules to extend the license period for IVDS system licenses to ten (10) years. Further, the Commission is requested to keep the plain language of Section 95.816(d)(3) and allow the use of installment payments over the length of the ten (10) year license period.

Respectfully submitted,

Euphemia Banas
Trans Pacific Interactive, Inc.
Wireless Interactive Return Path, L.L.C.
New Wave Communications, L.L.C.
Loli, Inc.
Multimedia Computer Communication, Inc.
Southeast Equities, Inc.
Robert H. Steele
MAR Partnership
IVDS On-Line Partnership
A.B.R. Communications Inc.
IVIDCO, L.L.C.
Vision TV
Dunbar TV Corp.
Legacy TV, Inc.


J. Jeffrey Craven
Janet Fitzpatrick
PATTON BOGGS, L.L.P.

Dated: September 4, 1996

Proposed Revised Rule - 47 C.F.R. § 95.811(d)

"The term of each IVDS system license and each CTS license is ~~ten~~ years."

Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications

Service, 7 FCC Rcd. 719 (1992). A ten-year license term will help produce the strong networks necessary to realize this goal.

**IV. Extension Of Installment Payments
To The Entire Length Of A Ten-Year License Term**

Currently, small businesses may elect to pay the full amount of their IVDS license bid in installments over the term of their licenses. 47 C.F.R. § 95.816(d)(3). This allows a small business to spread the cost of acquiring the IVDS license over the length of the license period. The current rules recognize the utility of such an approach. Without installment payments, many companies could not raise the initial investment necessary to enter the IVDS industry.

Petitioners ask the Commission to expand this common-sense installment payment plan to the new ten-year license period. For the reasons that the Commission found dispositive in initiating the installment payment option for the five-year license period, expansion of the installment payment plan makes sense over the ten-year period as well. This extension would require no change in the current wording of the regulation. The Commission can simply issue to each licensee a revised IVDS Auction Payment Schedule, and thereby enhance IVDS licensees' ability to operate a successful business by stretching the repayments over a longer licensing term, and thus allowing the licensees to direct resources to the development of IVDS services to the public. This approach would also enable the Commission to re-program its auction payment database, which is consistently unreliable.

Conclusion

The Commission deemed a ten-year license period beneficial for the cellular, MDS, and other market-based wireless services. For the same reasons, extending the IVDS license period

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(202) 457-6077

November 18, 1996

VIA FACSIMILE

Regina Dorsey, Chief
Office of Billings and Collections
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: Request for Emergency Meeting to Resolve IVDS Accounts

Dear Ms. Dorsey:

We have been attempting to contact you over the course of the last two weeks to request a meeting with you and your staff to resolve what we see as a series of discrepancies between our payment records for several of our IVDS clients and the FCC's records of their payment histories. We have attached hereto a list of clients whose IVDS payment histories are not fully reflected in your records.

Please call my Legal Assistant, Robb Edwards, at (202) 457-5234 so that we may schedule a meeting to resolve this issue as quickly as possible. At your request, we can provide copies of our payment records prior to the meeting to ensure that our time together is as efficient and beneficial as possible.

Thank you for your prompt attention to this matter.

Sincerely,



J. Jeffrey Craven

PATTON BOGGS, L.L.P.

Regina Dorsey

November 18, 1996

Page 2

Clients whose IVDS Payment Histories are not Consistent with FCC Records

ABR Communications

Dunbar Television Corporation

Southeast Equities, Inc.

WCTV Partners

IVIDCO, L.L.C.

Loli, Inc.

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WASHINGTON, D.C. 20037-1350
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February 10, 1997

BY HAND

Mr. Jerome Fowlkes
Chief Financial Analyst
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street NW
Washington, D.C. 20554

Re: Further Grace Periods

Dear Jerome:

On behalf of our clients, we thank you and your colleagues for your willingness to work with us to clarify the Commission's treatment of Section 1.2110(e)(4)(ii) of its rules, in the context of requests for further grace periods for making IVDS installment payments.

While the existing rules establish the standards through which IVDS licensees may gain relief from the upcoming (March 31 and June 30 quarterly payments), there is quite a bit of sentiment among the IVDS licensees that installment payments should be suspended during the pendency of the upcoming rulemaking proceeding which, we understand, could result in potentially fundamental changes to the IVDS rules. While we fully anticipate that such changes, when ultimately adopted, will be beneficial and will free IVDS licensees from some of the restrictions presently deterring its development, there is a high level of anxiety among the IVDS licensees. This anxiety is based, in part, on the fact that some members of the Commission staff have publicly suggested that the changes borne of the NPRM could include bandwidth relocation; different licensing arrangements for MSA and RSA; and even the reclamation of IVDS licenses by the Commission. In light of these statements, absent a prompt and unambiguous clarification of the methodology for implementing Section 1.2110(e)(4)(ii), it would be inequitable for the Commission to require further payments for spectrum which may or may not resemble that which they purchased in July 1994.

PATTON BOGGS, L.L.P.

Jerome Fowlkes

February 10, 1997

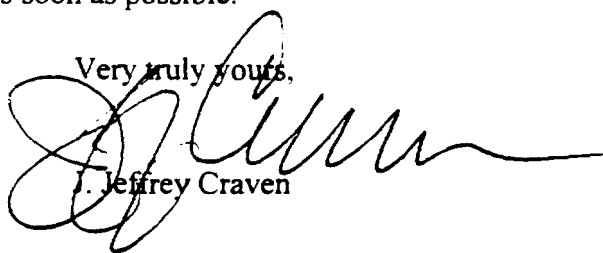
Page 2

Accordingly, it would be very helpful if IVDS licensees had a clearer understanding as to how the Commission will interpret the Section 1.2110(e)(4)(ii). We have the following specific requests for clarification:

1. Please confirm that upon denial of a request for a further grace period, a licensee would have twenty (20) days to bring its account current, without the subject license(s) being deemed forfeited.
2. Please confirm that the Commission will not act on any pending further grace period requests until at least sixty (60) days after the release of the FCC's Order completing the new IVDS rulemaking. Any actions, either granting or rejecting further grace period request will only complicate matters and increase licensee anxiety.
3. Please confirm that upon a grant of a further grace period, such further grace periods would run for six months each (not three months).
4. In addition, it would be helpful if you would provide some guidance as to the type of documentation you would deem appropriate as a basis for demonstrating financial distress.
5. We would like to review the text of the Note and Security Agreement which will be used in IVDS.

Jerome, we are grateful for your willingness to work with us and we pledge our best efforts to provide whatever feedback is helpful as we all move through this important period. We look forward to hearing from you as soon as possible.

Very truly yours,



J. Jeffrey Craven

cc: IVDS Clients
Stephen E. Coran, Esquire
Richard Myers, Esquire
Denise Moline, Esquire
David J. Kaufman, Esquire
Robert Kelly, Esquire

PATTON BOGGS, L.L.P.
2550 M STREET, N.W.
WASHINGTON, D.C. 20037

MRS. MARILYN SMITH
IVIDCO., L.L.C.
2090 EAST BUSTER MOUNTAIN DRIVE
TUCSON, AZ 85737

Invoice Number 15469
Invoice Date 03/17/97
Client Number 008399
Matter Number 0100

Re: IVIDCO / GENERAL

FOR PROFESSIONAL SERVICES RENDERED THROUGH 02/28/97:

Date	Tkpr		Hours
-----	----		-----
02/06/97	JJC	T/C Carl Smith re WINCOM.	0.25
02/07/97	JJC	Review binders of IVDS rulemakings from 1991 forward and begin to outline duty cycle and other key issues in terms of how they've been handled before.	0.10
02/10/97	JJC	Revise letter to J.Fowlkes re Grace Period Clarification; revise meo to clients re IVDS update; revise action timeline.	0.25

		TOTAL HOURS	0.60

TIMEKEEPER TIME SUMMARY:

Timekeeper	Hours	Rate	Value
-----	-----	-----	-----
J. JEFFREY CRAVEN	0.60	at \$210 =	126.00

CURRENT FEES

126.00

008399 IVIDCO, L.L.C
0100 IVIDCO / GENERAL
03/17/97

Invoice Number 15469
Page 2

FOR COSTS ADVANCED AND EXPENSES INCURRED:

TELEPHONE EXPENSE-LONG DISTANCE	19.90
FACSIMILE TRANSMISSION CHARGES	25.00

CURRENT EXPENSES	----- 44.90
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TOTAL AMOUNT OF THIS INVOICE	170.90
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re the Matter of)	
)	
Amendment of Part 1 of the)	WT Docket No. 97-82
Commission's Rules –)	
Competitive Bidding Procedures)	
)	

To: The Commission

PETITION FOR RECONSIDERATION

**LOLI, INC., CYBERFORCE, L.L.C., IVIDCO, L.L.C., M&B XXXIX, INC.,
SOUTHERN WAVE, L.L.C, STAR INTERACTIVE VIDEO INC., TEXAS
INTERACTIVE NETWORK, INC. and TRANS PACIFIC INTERACTIVE, INC.**

(collectively "Petitioners"), acting through their counsel and in accordance with Section 1.429 of the Commission's rules. hereby jointly petition the Commission to reconsider its *Third Report & Order And Second Further Notice of Proposed Rule Making*, in the Matter of *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures* (WT Docket 97-82); *Amendment of Spectrum Below 5 GHz Transferred from Federal Government Use* (ET Docket 94-32), _____ FCC Rcd _____ (1998) (FCC 97-413, released December 31, 1997) ("*Report & Order*").

Specifically, Petitioners request clarification and reconsideration of the change to Section 1.2110 of the Commission's rules governing the FCC's installment payment plan for small businesses.

In support of their joint petition the Petitioners set forth the following:

I. PARTIES AND STANDING

Petitioners are Interactive Video and Data Service ("IVDS") licensees, some of whom participated in the Commission's Part 1 rulemaking proceeding.¹ Each IVDS licensee has made timely down payments and installment payments until financial hardship caused each to request a Grace Period under Section 1.2110(e)(4) of the current Commission rules. Consistent with the Commission's existing rule, each Petitioner requested a "work out" of their existing installment payment schedule, as well as a clarification of which payment is due to the FCC on particular dates. As existing licensees subject to the Commission's installment payment rules, each Petitioner is directly affected by the Commission's elimination of the rule allowing licensees to file Grace Period requests as well as the Commission's adoption of an "automatic default" rule.

II. ARGUMENT

A. **The Commission Should Clarify That IVDS Licensees May Continue To File Grace Period Requests Under The "Old Rules" And That They Will Not Be Deemed In Default On Their *Future* Installment Payments Until The Commission Acts On Pending Or Future Grace Period Requests.**

Petitioners are among many IVDS Licensees who have submitted Grace Period requests for past installment payments as to which the Commission has not yet acted. Furthermore, Petitioners are among the group of IVDS Licensees who petitioned the Commission in September, 1996 for a rulemaking to extend IVDS installment payments to 10-year terms and

¹ Comments and Reply Comments were filed jointly in the Commission's Part 1 rulemaking proceeding by Airadigm Communications, Inc., Loli, Inc., New Wave Communications, Inc., KMC Interactive TV, Inc., MAR IVDS, Inc., New Wave PCS, Inc. and Euphemia Banas.

re-amortize existing license debt.² The Commission has not yet acted on the Petition for Rulemaking, but has publicly committed to doing so. See, FCC Public Notice DA 97-209, released January 29, 1997 (wherein the FCC delayed commencement of the IVDS Rural Service Area auction "to give the Commission an opportunity to consider a Petition for Rulemaking and numerous informal requests of potential bidders and license holders seeking to obtain additional flexibility for the service.")

The FCC's Report and Order states "we further clarify that such licensees [that have previously filed grace period requests] are not deemed to be in default on these licenses until such time as the Bureau issues a decision on these Grace Period requests."³ The Petitioners seek clarification that it is the Commission's intention to allow IVDS licensees, who have previously filed Grace Period requests, to continue to file Grace Period requests under the current Grace Period rules, rather than the newly adopted Grace Period provisions. Such a result would be procedurally efficient in that, once the Commission acts on the Grace Period requests, they would be doing so based upon the same underlying procedures and rules.

Indeed, the fairest and most equitable resolution for addressing this subject would be to suspend all payments until the FCC issues an Order in response to the Petition for Rulemaking, which would have the effect of finalizing the technical rules, thus freeing the industry to complete the development of IVDS equipment and services. As noted *supra*, this result would

² Petition For Rulemaking, filed September 4, 1996, by Euphemia Banas, Trans Pacific Interactive, Inc., Wireless Interactive Return Path, L.L.C., New Wave Communications, L.L.C., Loli, Inc., Multimedia Computer Communication, Inc., Southeast Equities, Inc., Robert H. Steele, MAR Partnership, IVDS On-Line Partnership, A.B.R. Communications, Inc., IVIDCO, L.L.C., Vision TV, Dunbar TV, Corp., and Legacy TV, Inc. Letter Amendment to Petition for Rulemaking filed January 28, 1997.

³ Report and Order at 69, ¶ 113.

also be consistent with the Commission's decision to suspend relevant deadlines while a relevant policy decision is underway.⁴

B. The Commission's Change to the Grace Period Rule is Arbitrary and Capricious because it Imposes An Unfair Burden Upon IVDS Licensees.

a. *IVDS Licensees Who Are Unable to Make Their Installment Payments Have Not Been Afforded the Same Remedies as Have PCS Licensees.*

Under Section 706(2)(A) of the Administrative Procedures Act ("APA"), agency actions may be set aside when the decision is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . ." The FCC's failure to accord IVDS licensees the same remedies as those given to PCS licensees is "arbitrary and capricious." Illinois Bell Telephone Co. v. FCC, 740 F.2d 465 (1984) (stating that an agency's application of a regulation is arbitrary and capricious when it can be shown that the agency's standards were inconsistently applied in similar situations.) As a result of this disparate treatment, IVDS licensees will disproportionately bear the burden of the Commission's new default rules.

PCS licensees had payments suspended for one year after they sought help from the FCC concerning their payment schedules.⁵ IVDS licensees requested similar treatment, but the FCC did not act upon this request.⁶ Further, PCS licensees were recently granted a range of options

⁴ See footnote 12, supra.

⁵ Installment Payments for PCS Licenses, Order, DA 97-649 (rel. March 31, 1997).

⁶ See, April 3, 1997 letter from J. Jeffrey Craven and Stephen Coran to Mr. William F. Caton, Acting Secretary and Daniel W. Phythyon, Acting Chief, Wireless Telecommunications Bureau.

for alleviating their financing difficulties.⁷ Two of these options, prepayment and amnesty, allow PCS licensees to eliminate their debt to the federal government. IVDS licensees have not been offered any option to cancel or otherwise negotiate their government debt. Thus, the Commission's new grace period rules, providing for one 180 days grace period and automatic installment payment default, disproportionately impacts IVDS licensees who have not been accorded the same payment suspensions or exit strategies.

Under the "arbitrary and capricious" standard, the first "step is to consider whether the agency has considered the relevant factors involved and whether there has been a clear error of judgment."⁸ The agency must also "articulate a 'rational connection between the facts found and the choice made.'"⁹ The Commission has not considered all of the relevant factors for IVDS licensees when it adopted a 180-day grace period and automatic default rule. The IVDS industry is unique among spectrum licensees that have installment payments.¹⁰ Indeed, IVDS is the only one without operational equipment and without firmly-established technical rules. For the past two to three years the IVDS industry has been working with the Commission to obtain relief

⁷ Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Service ("PCS") Licensees, Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 97-82, 62 Fed Reg 55348 (rel. October 16, 1997).

⁸ Citizens to Preserve Overton Park, Inc. v. Volpe, 401 US. 402 (1971).

⁹ Cincinnati Bell Telephone Co. v. FCC., 69 F.3d 752 (6th Cir. 1995) (quoting City of Brookings Mun. Tel. Co. v. FCC., 822 F.2d 1153, 1165 (DC. Cir. 1987)).

¹⁰ The Commission has provided installment financing in six auctions: regional narrowband PCS, IVDS, MDS, 900 MHz SMR, and broadband PCS C and F Block. FCC Report to Congress on Spectrum Auctions, FCC 97-353, released October 9, 1997.

from burdensome technical rules.¹¹ However, the Commission not yet acted on, nor even issued a Notice of Proposed Rulemaking for the IVDS licensees' Petition for Rulemaking, despite its express commitment to do so.

The Commission itself recognized that IVDS licensees should not be forced to invest in further equipment development and deployment until the IVDS rules are finalized.¹² In light of the unique difficulties facing the IVDS industry, the Commission's decision to eliminate the filing of Grace Period requests evidences a lack of consideration of relevant factors and a clear error of judgment with respect to IVDS licensees.

C. Equity Requires that the Commission Modify the Grace Period and Default Rules for IVDS Licensees.

a. IVDS Licensees Should, At a Minimum, Be Offered Options Similar to Those Granted to PCS Licensees

As noted above, the FCC was able to find options for PCS licensees in or on the brink of default, granting them a choice of feasible remedies. Failure to extend such options to IVDS licensees means that the Commission's new rules prohibiting Grace Period requests beyond 180

¹¹ For example, Loli, Inc. has consulted with FCC counsel on numerous occasions over the past three years regarding IVDS equipment selection and technical issues.

¹² "Requiring IVDS licensees to comply with rules which are under Commission review would not further the public interest in this instance, since the subject rules directly impacts IVDS system planning and implementation . . . [O]ur approach here is consistent with prior Commission action suspending a deadline while a relevant policy is subject to pending rule making proceedings." Requests by Interactive Video and Data Service Auction Winners to Waive the January 18, 1998 and February 28, 1998 Construction Deadlines, Order, DA 98-59, released January 14, 1998.

days, and failure to consider the financial information of individual licensees, will inevitably cause many IVDS Licensees to default as early as June 1998.¹³

Absent relief from current installment obligations and new Commission rules, IVDS licensees will be forced to file for bankruptcy during their 180 day automatic grace period, or after 180 days, default on their licenses. Either course of action further diverts resources from developing a workable business for the IVDS frequencies. This result would be particularly unfair when the Commission itself agreed that IVDS licensees should not be required to commit resources to the IVDS industry until the technical rules are certain. See footnote 12, *infra*.

Before imposing the new grace period rule on IVDS licensees, the Commission should attempt to develop options for IVDS licensees as it did for PCS licensees. In the alternative, the Commission should grant IVDS licensees additional time, until the IVDS rulemaking is complete, to meet the new financial burdens placed upon them by the new Grace Period rules.

b. The Commission Should Allow IVDS Licensees to Continue to File Grace Period Requests and Requests for "Work-Outs"

Many IVDS licenses are held by minority- and women-owned small businesses who do not have the financial means to bring their installment payments current. To expect such licensees to be able to make current payments within 180 days is unrealistic, especially in light of uncertain technical rules. As noted above, all other Commission installment payment licensees have operational equipment and feasible, non fluid, technical rules. Since IVDS is still a development stage industry, the Commission should grant IVDS licensees the flexibility to

¹³ Many IVDS licensees have made their installment payments near the end of the 90 day grace period under the existing rules. Thus, the Petitioners' payment of their December 31, 1997 payment, is due on March 31, 1998. If the new rules are applied to this payment, Petitioners are lead to believe that the licenses will automatically default at the end of June, 1998.

continue to seek Grace Periods under the original rules, so that IVDS licensees can present their financial data on a quarterly basis and thereby permit the Commission may make a "case-by-case" evaluation of the licensee's progress.

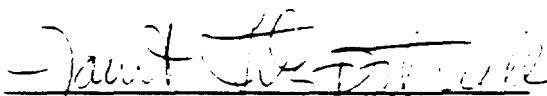
Indeed, if the Commission's new automatic default and license cancellation rule is imposed on IVDS licensees, a large number of IVDS licensees will be forced into default because they will be unable to meet the installment payment deadlines and late penalties will continue to mount, further frustrating the possibility of those licensees ever becoming current on payment obligations. Petitioners are hard-pressed to rationalize this result with the Commission's previously- stated recognition that "(r)equiring IVDS licensees to comply with rules which are under Commission review would not further the public interest." See footnote 12, *infra*.

Petitioners believe that factors, including the Commission's failure to act on its promise to review and revise IVDS' technical rules, have conspired to create a nightmare scenario for IVDS licensees. Unless the Commission agrees to suspend IVDS payments until the conclusion of the long- promised Rulemaking, or permits IVDS licensees to continue to file grace period requests under the old rules, IVDS licensees will be forced into a Hobson's choice: make payments on spectrum for which the technical rules are in flux; file bankruptcy; or default and risk retribution from the Commission over the balance owed. Certainly this is not the result that the Commission or the IVDS licensees intended four years ago when the IVDS Auction took place. Surely some balanced and equitable result can be achieved. Clarification of the grace period rules -- consistent with the comments herein -- would be a proper beginning.

WHEREFORE, in light of the foregoing, the Joint Petitioners request that the Commission reconsider its *Report & Order* consistent with this Petition.

Respectfully submitted,

**LOLI, INC.
CYBERFORCE, L.L.C.
IVIDCO, L.L.C.
M&B XXXIX, INC.
SOUTHERN WAVE, L.L.C.
STAR INTERACTIVE VIDEO
TEXAS INTERACTIVE NETWORK
TRANSPACIFIC INTERACTIVE**

By: 
J. Jeffrey Craven
Janet Fitzpatrick
PATTON BOGGS, L.L.P.
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000

Their Counsel

Dated: February 17, 1998

STAMP-IN

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re the Matter of)

Amendment of Part 1 of the)
Commission's Rules --)
Competitive Bidding Procedures)

WT Docket No. 97-82

To: The Commission

PETITION FOR RECONSIDERATION

LOLI, INC.
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Dated: February 17, 1998

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